

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

| | | |
|----------------------------------|---|----------------|
| FABIAN SANTIAGO, #B79716, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | No. 05-512-MJR |
| |) | |
| SGT. CHILDERS, C/O SMITHSON, C/O |) | |
| ANDERSON, C/O STARKEY, C/O |) | |
| BERNARD, LT. DALLAS, LT. SIEPP, |) | |
| UNKNOWN PARTIES, WEISLEY |) | |
| WILES, COUNSELOR McNABB, |) | |
| GRIEVANCE OFFICER THENNY, |) | |
| WARDEN MOTE, SHERRY HILE, |) | |
| and DIRECTOR WALKER |) | |
| |) | |
| Defendants. |) | |

ORDER

Before the Court is plaintiff's motion for an order directing the U.S. Marshal to serve defendant Childers with summons and the complaint. **(Doc. 49)**. Plaintiff indicates that service has been impeded because Childers is on military duty until an unspecified date in 2008. **(See Doc. 47)**. Plaintiff notes that the U.S. Marshal has offices in Iraq and Afghanistan.

Service upon defendant Childers has been addressed by the Court before. **(See Doc. 53)**. There is no indication Childers had notice of the complaint against him, so a stay pursuant to the Servicemembers Civil Relief Act, 50 App. U.S.C. § 522 is inapplicable. Service in accordance with Federal Rule of Civil Procedure 4(e)(2) also appears unfeasible, as Childers has ceased to stay at what had been his abode in Illinois. Moreover, the Court has no knowledge of Childers' actual location, so the Court cannot even begin to explore how to effect service under Rule 4(j).

Although dismissal of defendant Childers without prejudice would certainly be warranted, the Court will not make such a recommendation at this juncture. However, plaintiff is forewarned that if defendant Childers is not located by November 16, 2007 (the deadline for identifying the "John Doe" defendants), Childers will be dismissed without prejudice.

IT IS THEREFORE ORDERED that the subject motion (**Doc. 49**) is **DENIED**.

IT IS SO ORDERED.

DATED: September 10, 2007

s/ Clifford J. Proud
CLIFFORD J. PROUD
U. S. MAGISTRATE JUDGE